

SCOTT N. SCHOOLS, SC SBN 9990
 United States Attorney
 JOANN M. SWANSON, CSBN 88143
 Assistant United States Attorney
 Chief, Civil Division
 ILA C. DEISS, NY SBN 3052909
 Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
 San Francisco, California 94102
 Telephone: (415) 436-7124
 FAX: (415) 436-7169

Attorneys for Defendants

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

MAHSHID KIANFARD,

Plaintiff,

v.

PETER D. KEISLER, Attorney General
 of the United States in his Official Capacity;
 ROBERT S. MUELLER, Director of FBI in his
 Official Capacity;
 MICHAEL CHERTOFF, Secretary of the
 Department of Homeland Security, in his Official
 Capacity;
 EMILIO T. GONZALEZ, Director of the United
 States Citizenship and Immigration Services, in
 his Official Capacity;
 ROSEMARY MELVILLE, District Director of
 the San Francisco Citizenship and Immigration
 Services, in her Official Capacity,

Defendants.

No. C 07-2904 WDB

CROSS-OPPOSITION TO PLAINTIFF'S
 MOTION FOR SUMMARY JUDGMENT

Date: November 7, 2007
 Time: 1:30 p.m.
 Courtroom: 4, 3rd Floor

As an initial matter, Defendants seek dismissal of Defendants Keisler and Mueller. On March 1, 2003, the Department of Homeland Security and, under it, the USCIS, assumed responsibility for the adjustment program. 6 U.S.C. § 271(b). Accordingly, the discretion formerly vested in the Attorney General is now vested in the Secretary of Homeland Security. 6 U.S.C. § 551(d). Plaintiff has not identified any statute or regulation establishing a nondiscretionary duty on the

1 part of the FBI to process name checks for adjustment of status applications. *See Clayton v.*
2 *Chertoff*, 2007 WL 2904049 (N.D.Cal. Oct. 1, 2007) at *3. Instead, the FBI's involvement in
3 adjudicating I-485 applications arises by contract between USCIS and the FBI. Accordingly, this
4 Court has no jurisdiction to compel the FBI to complete the background check and the claims
5 against Defendant Mueller are dismissed. *Konchitsky v. Chertoff*, 2007 WL 2070325 (N.D.Cal.
6 Jul 13, 2007) at*6.

7 The Defendants recognize this Court's decision in *Razaq v. Poulos*, 2007 WL 61884, at *4
8 (N.D.Cal. Jan. 8, 2007) ("Congress had to have intended the executive branch to complete these
9 'adjudications' within a reasonable time-because imposing no time constraint at all on the
10 executive branch would be tantamount to giving the government the power to decide whether it
11 would decide.... A 'duty to decide' becomes no duty at all if it is accompanied by unchecked power
12 to decide when to decide."). In this case, however, Defendants have provided the declaration of
13 Ronald Nelson, the Senior Adjudications Officer in the San Francisco District, who attests that he
14 has reviewed the records regarding Plaintiff's I-485 application, and that to date, required security
15 checks have yet to be completed, which prevents USCIS from adjudicating Plaintiff's application.
16 (Nelson Decl. ¶¶ 3, 16.). Mr. Nelson explained that a lengthy delay is sometimes unavoidable
17 because the security check reveals derogatory information on the subject alien that is possessed by
18 some other government agency without revealing the substance of that information. (Id. ¶ 13.)
19 Additionally, even after all of the known information from government agencies is collected,
20 further investigation is required. (Id.)

21 Thus, even accepting as true all of Plaintiff's factual allegations, Defendants have provided
22 sufficient evidence to demonstrate that any delay in adjudicating Plaintiff's I-485 application is not
23 due to agency inaction, but rather to the time required to resolve all concerns of a law enforcement
24 or national security nature. Therefore, Plaintiff's suit simply seeks to force USCIS to complete the
25 adjudication in a more expeditious manner. As long as USCIS is making reasonable efforts to
26 complete the adjudication, the pace required to complete that process is committed to USCIS's
27 discretion, and any delay is reasonable.

28 For the foregoing reasons, the Government respectfully asks the Court to dismiss Defendants

1 Keisler and Mueller, and grant the remaining Defendants' motion for summary judgment as a
2 matter of law.

3 Dated: October 24, 2007

Respectfully submitted,

4 SCOTT N. SCHOOLS
5 United States Attorney

6 _____/s/
7 ILA C. DEISS
8 Assistant United States Attorney
9 Attorney for Defendants
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